

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ABRAHAM GROSS, NETTY GROSS,

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT, LOUISE CARROLL, ANNA-MARIE
HENDRICKSON, MARGARET BROWN, BABBA
HALM, VICTOR HERNANDEZ, SHATARA PELL,
MARK MATTHEWS, NICOLE LONDON, EDWIN
LUGO, NIDIA DORMI, GABRIEL MOMBRUN,
JAMES E. JOHNSON, HAROLD WEINBERG, NICK
LUNDGREN, SAMANTHA SCHONFELD, HELEN
ROSENTHAL, BREAKING GROUND, JEANNE-
MARIE WILLIAMS, BRENDA ROSEN, TERRESA
PALMIERI, VANESSA CUCURULO, STEPHANIE
LABARTA, and TRAVIS FONG,

Defendants.
-----X

**STIPULATION OF
SETTLEMENT AND
DISMISSAL, PURSUANT
TO RULE 40(a)(1)**

20-CV-4340 (GBD) (RWL)

RECITALS

WHEREAS, on July 12, 2019, Abraham Gross (“GROSS”) initiated a proceeding pursuant to New York Civil Practice Law and Rules Article 78 in the Supreme Court of the State of New York, County of New York captioned “*Abraham Gross v. Affordability Oversight Program Department of Housing Preservation and Development*” (Index No. 101081/2019), which was amended and the proceeding was then captioned, “*Abraham Gross v. Affordability Oversight Program Department of Housing Preservation and Development, BG, RCB1 Residential For Sale LLC, RCB3 Residential For Sale LLC and RCB4 Residential for Sale LLC*”(the “NY State Court Article 78 Proceeding”); and

WHEREAS, the New York State Supreme Court denied the Article 78 Petition by Decision, Order and Judgment dated August 16, 2019; and

WHEREAS, GROSS filed an appeal of this Decision, Order and Judgment with the New York State Appellate Division, First Department (App. Div. Index No. 4206/19) (the “First Appeal”); and

WHEREAS, on December 24, 2019, GROSS filed an action in the Supreme Court of the State of New York, County of New York on behalf of himself and his mother, Netty Gross (“Ms. N. Gross.”) captioned “*Abraham Gross, and Netty Gross v. The Department of Housing Preservation and Development, Shatara Pell, Victor Hernandez, Louise Carroll, BG, Brenda Rosen, Vanessa Cucurullo, Teresa Palmieri, Travis Fong and Stephanie Labarta,*” (Index No. 101690/2019)(the “NY State Court Action”); and

WHEREAS, by Order dated May 8, 2020, the New York State Court dismissed a portion of the NY State Court Action and severed the remaining claims, referring them to the New York State Court’s City Part; and

WHEREAS, GROSS filed an appeal of the Order in the NY State Court Action with the New York State Appellate Division, First Department (App. Div. Index No. 3673/20)(the “Second Appeal”); and

WHEREAS, the defendants in the NY State Court Action moved in the City Part to dismiss the remaining claims and no decision has been issued on the motion; and

WHEREAS, on June 5, 2020, GROSS initiated the instant action and on October 15, 2020, Gross filed the Second Amended Complaint (“SAC”), captioned, “*Abraham Gross, Netty Gross v. The City of New York, New York City Department of Housing Preservation and Development, Louise Carroll, Anna-Marie Hendrickson, Margaret Brown, Babba Halm, Victor Hernandez, Shatara Pell, Mark Matthews, Nicole London, Edwin Lugo, Nidia Dormi, Gabriel*

Mombrun, James E. Johnson, Harold Weinberg, Nick Lundgren, Samantha Schonfeld, Helen Rosenthal, Breaking Ground, Jeanne-Marie Williams, Brenda Rosen, Teresa Palmieri, Vanessa Cucurullo, Stephanie Labarta and Travis Fong” (the “Federal Action”)¹; and

WHEREAS, All Defendants deny the allegations as asserted against them contained in the NY State Court Article 78 Proceeding, the NY State Court Action, the First Appeal, the Second Appeal, and/or the instant Federal Action and admit no liability; and

WHEREAS, the Parties enter into this Stipulation to resolve their dispute;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PLAINTIFFS AND ALL DEFENDANTS, through the undersigned, in consideration of the mutual promises contained herein, fully intending to be legally bound hereby, as follows:

1. The foregoing Recitals are incorporated into this Stipulation.
2. HPD and BREAKING GROUND have conducted a review of new financial documentation (the “New Documentation”) that GROSS provided as part of settlement discussions in the instant action to determine if he is eligible for a low-income housing unit in the Waterline Square development, located at 400 West 61st Street, New York, New York. HPD and BREAKING GROUND have determined, based on a review of those documents, that GROSS is income eligible for a low-income housing studio unit at the Waterline Square development.
3. BREAKING GROUND agrees to recommend that GROSS be offered a lease agreement with RCB1 Affordable LLC, the property owner of Waterline Square, for a studio apartment, Unit No. 2528, located in the Waterline Square development at 400 West 61st Street, New York, New York (the “WS Unit”).

¹ The entities and individuals identified as defendants in the NY State Court Article 78 Proceeding, the NY State Court Action, the Appeal, the Second Appeal, and the Federal Action, excluding Gabriel Mombrun, are hereinafter collectively referred to as “All Defendants”.

4. In consideration for HPD and BREAKING GROUND's review of the New Documentation and recommendation by BREAKING GROUND, pursuant to Federal Rule of Civil Procedure 41(a)(1), this action is dismissed with prejudice and without costs or attorneys' fees to any party as against the other.

5. In connection with this agreement, GROSS and Ms. N. Gross will provide to counsel for All Defendants the following documents: (i) a copy of this Stipulation executed by GROSS and Ms. N. Gross; and (ii) Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit "A," dismissing the NY State Court Article 78 Proceeding, (iii) Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit "B," dismissing the NY State Court Action; (iv) a Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit "C" dismissing the First Appeal; and (v) a Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit "D" dismissing the Second Appeal.

6. In consideration of the mutual promises made in this Stipulation, GROSS and Co-Plaintiff Ms. N. Gross release and forever discharge the City, HPD, BREAKING GROUND, RCB1 Affordable LLC, and All Defendants, including any former, current or future affiliated, related or successor corporations, any current, former or future employees, directors, insurers, attorneys, representatives and/or agents, in both their corporate and individual capacities from any and all claims, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, complaints, cross-claims, counterclaims, damages, sums of money, interest, attorneys' fees and costs, or causes of action of any kind or nature whatsoever, known or unknown, made or which could have been made, suspected or unsuspected, fixed and contingent, at law or in equity whatsoever which GROSS, Ms. N. Gross or which his and/or her heirs, executors, administrators, agents and assigns, ever had, now has or may have against them

arising out of any actions, conduct, decisions, behavior, or event occurring on or before the date of this Stipulation.

7. This release applies, without limitation, to all suits, administrative proceedings, actions, claims, or damages based on, arising out of, resulting from, or in any way connected, directly or indirectly, with GROSS's application to Waterline Square and/or the denial of the application, and/or arising out of the housing lottery for the Waterline Square project, expressly including, but not limited to, breach of contract, Title VII of the Civil Rights Act of 1964 ("Title VII"), the New York State Human Rights Law, the New York City Human Rights Law, and/or violation of the Americans with Disabilities Act ("ADA"), civil Racketeer Influenced and Corrupt Organizations claims, tort claims, retaliation for reporting a violation of the law, and any and all other federal, state or local laws, common law, rules, statutes, regulations, constitutions, Executive Orders, ordinances or public policies, including claims regarding alleged due process violations, and any claims for attorneys' fees, interest or penalties related to these claims whether known or unknown. This release covers claims both that GROSS and Ms. N. Gross know about and those that s/he may not know about. By accepting the benefits provided for in this Stipulation, GROSS and Ms. N. Gross agree not to sue or allege claims in any way against All Defendants with respect to any claims that are covered by this Stipulation.

8. All Defendants release and forever discharge GROSS and Ms. N. Gross from any and all claims, suits, debts, dues, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, complaints, cross-claims, counterclaims, damages, sums of money, interest, attorneys' fees and costs, or causes of action of any kind or nature whatsoever, known or unknown, made or which could have been made, suspected or unsuspected, fixed and contingent, at law or in equity whatsoever which All Defendants or which their heirs, executors, administrators, agents and assigns, ever had, now has or may have against them arising out

of any actions, conduct, decisions, behavior, or event occurring on or before the date of this Stipulation.

9. GROSS understands and agrees that the review of the New Documentation and recommendation by BREAKING GROUND specified in paragraphs “2” and “3” above is the only benefit to which he is entitled under this Stipulation. GROSS and Ms. N. Gross understand and agree that they will not seek anything further, whether monetary or otherwise, from All Defendants as further consideration for the release herein.

10. GROSS and Ms. N. Gross. acknowledge and agree that the consideration set forth in paragraphs “2” and “3” is sufficient for the release contained in paragraphs “4,” “5,” “7”, and “8.”

11. Other than expressly identified in the Recitals herein, GROSS and Ms. N. Gross represent that there are no pending lawsuits, charges, administrative proceedings, or other claims of any nature whatsoever by GROSS or Ms. N. Gross against All Defendants in any state, federal or local court, or before any agency or other administrative body. GROSS and Ms. N. Gross will take all steps necessary to conclude the pending actions or proceedings as set forth herein. GROSS and Ms. N. Gross further represent that they have not assigned any claims of any nature whatsoever to any person or entity which could be asserted against All Defendants in any state, federal or local court, or before any agency or other administrative body.

12. None of the Defendants shall be responsible for any of the costs, expenses, or attorneys’ fees incurred by GROSS and/or Ms. N. Gross in connection with this action or the New York State Court Article 78 Proceeding, the First Appeal, the New York State Court Action, and the Second Appeal.

13. This Stipulation shall not be construed as an admission of any fault or liability by the City, HPD, BREAKING GROUND, or any of the Defendants for any of the acts or

omissions alleged by GROSS or Ms. N. Gross, or for any acts or omissions which could have been alleged. The City, HPD, BREAKING GROUND and All Defendants specifically deny any liability whatsoever, and specifically deny any wrongful conduct for any damages, injuries or other claims made by GROSS or Ms. N. Gross or which could be made or claimed by GROSS or Ms. N. Gross.

14. Nothing contained herein shall be deemed to constitute a policy or practice of the City, HPD, or BREAKING GROUND.

15. GROSS hereby agrees that he will use his best efforts to remove existing statements posted on his social media account, GoFundMe page and/or posted by GROSS on YouTube that disparage BREAKING GROUND.

16. HPD and BREAKING GROUND agree that GROSS's and Ms. N. Gross's financial and other personal information, in their possession, will be maintained as confidential in compliance with applicable law and it will not be disclosed; however the Parties agree that HPD and BREAKING GROUND may disclose financial and/or personal information as required and/or necessary to comply with law, rule, or legal process, any court order, regulatory agreements or audit.

17. All Parties are bound by this Stipulation as well as their successors and assigns.

18. Notices under this Stipulation shall be provided to the Parties via electronic mail or by overnight courier such as Federal Express:

Plaintiff: Abraham Gross and Netty Gross

Prior to Lease Signing: 40 W. 77th Street, Apt. 10C
New York, New York 10024
Email: agross2@gmail.com

After Lease Signing: Abraham Gross

400 West 61st Street, Unit No. 2528
New York, New York 10023
E-mail: agross2@gmail.com

Netty Gross
40 W. 77th Street, Apt. 10C
New York, New York 10024
Email: agross2@gmail.com

HPD:

Jasmine Paul
Senior Counsel
Administrative Law and Regulatory Litigation Division
New York City Law Department
100 Church Street, Room 5-182
New York, New York 10007
E-mail: jpaul@law.nyc.gov

Breaking Ground:

Laura B. Juffa
Kaufman Borgeest & Ryan LLP
120 Broadway, 14th Floor
New York, New York 10271
E-mail: ljuffa@kbrlaw.com

19. This Stipulation contains all of the terms and conditions agreed upon by the Parties, and fully supersedes any and all prior or contemporaneous agreements and understandings pertaining to the subject matter hereof. No oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Stipulation, regarding the subject matter of the instant action shall be deemed to exist, to bind the Parties hereto, or to vary the terms and conditions contained herein. GROSS and Ms. N. Gross represent and acknowledge that, in executing this Stipulation they have not relied upon any representation or statement not set forth herein which may have been made by the City, HPD, BREAKING GROUND, RCB1 Affordable LLC, or any other party with regard to the subject matter of this Stipulation.

20. Should any provision of this Stipulation be found to be in violation of law, or ineffective or barred for any reason whatsoever, the remainder of this Stipulation shall remain in full force and effect.

21. This Stipulation shall be construed in accordance with New York law without reference to its principles of conflicts of law.

22. This Stipulation shall become effective after execution by all Parties.

23. By signing this Stipulation GROSS and Ms. N. Gross acknowledge and state that:

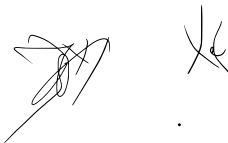
- a. They have read it; and
- b. They understand it and know that they are giving up important rights, including but not limited to rights under common law and other constitutional, statutory or common law right and privileges; and
- c. They negotiated this Stipulation with knowledge and express consent; and
- d. They have been given what they consider to be a reasonable period of time to review and consider this Stipulation prior to signing it.
- e. They have signed this Stipulation knowingly and voluntarily.

24. This Stipulation may be executed in multiple counterparts, a facsimile, pdf, or electronic signature shall have the same binding effect as an original.

Dated: New York, New York
December 21, 2020




Abraham Gross, *Pro se* Plaintiff
40 W. 77th Street, Apt. 10C
New York, New York 10024
Telephone: (917) 673-1848
E-mail: agross2@gmail.com



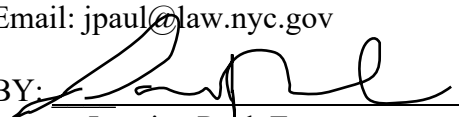
Netty Gross, *Pro se* Plaintiff
40 W. 77th Street, Apt. 10C
New York, New York 10024
Telephone: (917) 673-1848
E-mail:

KAUFMAN BORGEEST & RYAN LLP

By: 


Laura B. Juffa, Esq.
Attorney for Breaking Ground Defendants¹
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JAMES E. JOHNSON
Corporation Counsel of the
City of New York
Attorney for City Defendants²
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BY: 


Jasmine Paul, Esq.

KELLNER HERLIHY GETTY & FRIEDMAN LLP

By: 

Jeanne-Marie Williams, Esq.
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So Ordered:


12/23/2020

Hon. Robert W. Lehrburger
United States Magistrate Judge

¹ The “Breaking Ground Defendants” are: Common Ground Management d/b/a Breaking Ground, Brenda Rosen, Teresa Palmieri, Vanessa Cucurullo, Stephanie Labarta and Travis Fong.

²The “City Defendants” are: The City of New York, New York City Department of Housing Preservation and Development, Louise Carroll, Anne-Marie Hendrickson, Margaret Brown, Baaba Halm, Victor Hernandez, Shatara Pell, Mark Matthews, Nicole London, Edwin Lugo, Nidia Dormi, James E. Johnson, Harold Weinberg, Nick Lundgren, Samantha Schonfeld, and Helen Rosenthal.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ABRAHAM GROSS,

Petitioner,

-against-

THE DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (HPD),
BREAKING GROUND, RCB1 RESIDENTIAL FOR
SALE LLC, RCB3 RESIDENTIAL FOR SALE LLC
AND RCB4 RESIDENTIAL FOR SALE LLC,

Respondents.

New York County Index No:
101081/2019

**STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the Petitioner Abraham Gross and attorneys for the Respondents that this proceeding, including the appeal filed with the Appellate Division under App. Div. Index No. 2019-04206, is discontinued **with prejudice** and without costs or attorneys' fees to either party as against the other.

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation may be executed in multiple counterparts, a facsimile, pdf, or electronic signature shall have the same binding effect as an original.

Dated: New York, New York
December 21, 2020

PRO SE PETITIONER



Abraham Gross
Pro Se Petitioner
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New York, New York 10024
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E-mail: agross2@gmail.com

KELLNER, HERLIHY, GETTY &
FRIEDMAN LLP

By: 

Jeanne-Marie Williams, Esq.
*Attorneys for Breaking Ground, RCB1
Residential for Sale LLC, RCB3
Residential for Sale LLC, and RCB4
Residential For Sale LLC*
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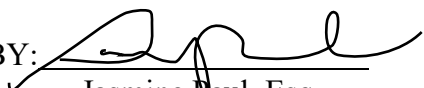
BY: 
Jasmine Paul, Esq.

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ABRAHAM GROSS and NETTY GROSS,

Plaintiffs,

-against-

THE DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT (HPD), SHATARA PELL,
VICTOR HERNANDEZ, LOUISE CARROLL,
BREAKING GROUND (BG), BRENDA ROSEN,
VANESAA CUCURULLO, TERESA PALMIERI,
TRAVIS FONG, and STEPHANIE LABARTA,

Defendants.

New York County Index No:
101960/2019

**STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the Plaintiffs Abraham Gross and Netty Gross and attorneys for the Defendants that, pursuant to Section 3217(b) of the New York Civil Practice Law and Rules, this action, including the appeal filed with the Appellate Division under App. Div. Index No. 3673/20, is discontinued **with prejudice** and without costs or attorneys' fees to either party as against the other; and .

IT IS FURTHER STIPULATED AND AGREED, that despite the Court's direction that the County Clerk assign a new index number for the causes of action severed pursuant to Justice Kelley's Decision, Order, and Judgment and Order of Transfer dated May 8, 2020, the parties did not take the steps necessary for a new action to be filed under a new index number; and

IT IS FURTHER STIPULATED AND AGREED, that consequently, all causes of action in this action bearing Index No. 101960/2019 as well as the causes of action severed pursuant to Justice Kelley's Decision, Order and Judgment of Transfer dated May 8, 2020 are discontinued with prejudice by this stipulation.

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation may be executed in multiple counterparts, and that a facsimile, pdf, or electronic signature shall have the same binding effect as an original.

Dated: New York, New York
December 21, 2020

PRO SE PLAINTIFF



Abraham Gross
Pro Se Plaintiff
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KELLNER HERLIHY GETTY &
FRIEDMAN, LLP

By: 

Jeanne-Marie Williams, Esq.
*Attorneys for Breaking Ground, Brenda Rosen,
Vanessa Cucurullo, Teresa Palmieri, Travis
Fong and Stephanie Labarta*
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PRO SE PLAINTIFF



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JAMES E. JOHNSON
CORPORATION COUNSEL OF THE CITY OF
NEW YORK

By: 

Jasmine Paul, Esq.
*Attorney for the New York City Department of
Housing Preservation and Development,
Shatara Pell, Victor Hernandez and Louise
Carroll*
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EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

ABRAHAM GROSS,

Petitioner-Appellant,

-against-

THE DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (HPD),
BREAKING GROUND, RCB1 RESIDENTIAL FOR
SALE LLC, RCB3 RESIDENTIAL FOR SALE LLC
AND RCB4 RESIDENTIAL FOR SALE LLC,

Respondents-Respondents.

Supreme Court Index No:
101081/2019

App. Div. No. 2019-04206

**STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the
Petitioner-Appellant Abraham Gross and attorneys for the Respondents-Respondents Department
of Housing Preservation and Development, Breaking Ground, RCB1 Residential for Sale LLC,
RCB3 Residential for Sale LLC, and RCB4 Residential for Sale LLC that, pursuant to 22
NYCRR Part 1250.2 and by leave of the Court, the appeal filed by petitioner Abraham Gross in
this proceeding is hereby withdrawn; all outstanding motions in the proceeding are withdrawn;
and the proceeding is discontinued with prejudice and without costs or attorneys' fees to either
party as the matter has been settled.

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation may be executed in multiple counterparts, a facsimile, pdf, or electronic signature shall have the same binding effect as an original. Dated: New York, New York

December 21, 2020

PRO SE PLAINTIFF-APPELLANT



Abraham Gross
Pro Se Plaintiff-Appellant
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KELLNER HERLIHY GETTY &
FRIEDMAN, LLP

By: 

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*Attorneys for Breaking Ground, RCB1
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for Sale LLC*
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JAMES E. JOHNSON
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NEW YORK

By: 

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EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

ABRAHAM GROSS and NETTY GROSS,

Plaintiffs-Appellants,

-against-

THE DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT (HPD), SHATARA PELL,
VICTOR HERNANDEZ, LOUISE CARROLL,
BREAKING GROUND (BG), BRENDA ROSEN,
VANESAA CUCURULLO, TERESA PALMIERI,
TRAVIS FONG, and STEPHANIE LABARTA,

Defendants-Respondents.

Supreme Court Index No:
101960/2019

App. Div. No. 2020-3673

STIPULATION OF
DISCONTINUANCE WITH
PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between the Plaintiffs-Appellants Abraham Gross and Netty Gross, and the attorneys for the Defendants-Respondents Department of Housing Preservation and Development, Shatara Pell, Victor Hernandez, Louise Carroll, Breaking Ground, Brenda Rosen, Vanesaa Cucurullo, Teresa Palmieri, Travis Fong, and Stephanie Labarta, that, pursuant to 22 NYCRR Part 1250.2 and by leave of the Court, the appeal filed by plaintiffs Abraham Gross and Netty Gross in this proceeding is hereby withdrawn; all outstanding motions in the proceeding are withdrawn; and the proceeding is discontinued with prejudice and without costs or attorneys' fees to either party as the matter has been settled.

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation may be executed in multiple counterparts, a facsimile, pdf, or electronic signature shall have the same binding effect as an original. Dated: New York, New York

December __, 2020

PRO SE PLAINTIFF-APPELLANT



Abraham Gross
Pro Se Plaintiff
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New York, New York 10024
Telephone: (917) 673-1848
E-mail: agross2@gmail.com

KELLNER HERLIHY GETTY &
FRIEDMAN, LLP

By: 
Jeanne-Marie Williams, Esq.

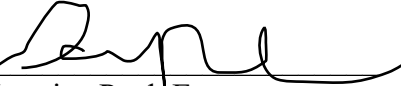
Attorneys for Breaking Ground, Brenda Rosen,
Vanessa Cucurullo, Teresa Palmieri, Travis Fong
and Stephanie Labarta
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PRO SE PLAINTIFF-APPELLANT



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Pro Se Plaintiff
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JAMES E. JOHNSON
CORPORATION COUSEL OF THE CITY OF
NEW YORK

By: 
Jasmine Paul, Esq

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Housing Preservation and Development, Shatara
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